

Although EchoStar specifically addressed Winston's request for a waiver in this proceeding in the Opposition, see page 13 of same, EchoStar failed to serve Winston with the document. The Commission has afforded parties such as Winston who were not served with the Opposition the opportunity to respond to it by March 24, 2006. See *Extension of Time to File Responses to Opposition to TV Station Requests for Waiver of Digital Testing Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004*, Public Notice, DA 06-579 (released March 17, 2006). Therefore, the instant Reply is timely filed. EchoStar filed a supplement to the Opposition in the form of a letter on February 17, 2006. EchoStar did not address Winston's waiver request in the supplement. Please note that EchoStar incorrectly stated that WBNX-TV is licensed to Syracuse, New York.

2. Winston is eligible for a waiver of the digital signal strength testing procedure as the Application remains pending as Winston and the FCC await the approval of the Canadian government. To be eligible for such a waiver, Winston must provide clear and convincing evidence that WBNX-TV's digital facilities are "limited due to the unremediable presence of...international coordination...." *See* 47 U.S.C. § 339(a)(2)(D)(viii)(I). The statute does not state what constitutes clear and convincing evidence. However, if there were an example of a case that would qualify for a waiver of the digital signal strength test due to international coordination issues, Winston's travails in the prosecution of the Application would be that case.

3. In July 2001, Winston received an inquiry from the Commission stating that the facilities proposed in the Application would cause prohibited interference to the Canadian digital television allotment for Channel 30 in Paris, Ontario. In response to the inquiry, Winston submitted an engineering showing based on the Longley-Rice propagation prediction methodology to show that Channel 30 in Paris, Ontario would be protected by WBNX-TV's proposed digital facilities. As the Application remained pending after Winston submitted the engineering showing, it amended the Application on March 22, 2002, to include the Longley-Rice showing and further information to ameliorate Industry Canada's concerns.

4. Industry Canada informed the Commission that the Application remained unacceptable on April 3, 2003. Winston was unaware of Industry Canada's findings until it received a letter dated December 18, 2003, from the Commission informing Winston of Industry Canada's decision. A series of amendments were made to the Application in February and March of 2004 in an attempt to resolve the alleged interference to the Canadian

allotment. In these amendments, Winston ultimately replaced the antenna proposed in the initial application with a new Dielectric custom directional transmitting antenna that Winston believed would eliminate the prohibited interference with the Canadian DTV allotment using electric and mechanical beam tilting.

5. Winston learned through its consulting engineers that the Application was no longer being processed because Industry Canada mistakenly believed their government did not recognize beam tilting as a mechanism to eliminate digital television signal interference. Industry Canada's position is incorrect as beam tilting was specifically included as a technical factor that could be used to determine if a proposed U.S. television station would cause interference to a Canadian television station in the *Letter of Understanding Between the Federal Communications Commission and Industry Canada Related to the use of the 54-72 MHz, 76-88 MHz, 174-126 MHz and 470-806 MHz Bands for Digital Television Broadcasting Service Along the Common Border*, para.5 (released September 29, 2000). Winston's counsel sent a letter to the Commission to make this point on April 9, 2004. See Letter dated April 9, 2004, from Kevin M. Walsh, Irwin, Campbell & Tannenwald, P.C., to Marlene H. Dortch, Secretary, FCC.

6. Despite Winston's best efforts, the matter remained unresolved. In the next year, Winston's consulting engineer Dirk Freeman worked extensively with Dielectric to prove to Industry Canada and that the beam tilting technology would protect Channel 30 in Paris, Ontario. During this time, Industry Canada twice changed its digital signal evaluation software, which required Industry Canada to reevaluate the information provided by Mr. Freeman. See Comments Prepared for Winston Broadcasting Network, Inc. from Dirk

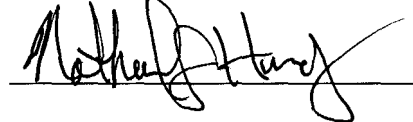
Freeman, Blair Media Inc., attached hereto as Attachment A. *See also* Statement of John Hidle, P.E., attached hereto as Attachment B. Mr. Freeman's efforts ultimately proved successful and Winston has been advised by Industry Canada that it now believes that Industry Canada will approve the Application, as amended on February 24, 2006, once the Commission has the opportunity to present the Application for international coordination.

7. Conclusion. From October 29, 1999, the day that Winston filed its application for digital facilities for WBNX-TV, it has diligently prosecuted the Application including taking extraordinary action to accommodate the concerns of Industry Canada and the Commission that the allotment for digital Channel 30 in Paris, Ontario will be protected. Winston believes that its and its consulting engineers ceaseless efforts have prevailed and Industry Canada's concerns are satisfied. Winston's experience is exactly the scenario that was predicated by Congress when the digital signal testing waiver provision was drafted. Winston has presented clear and convincing evidence that WBNX-TV's digital facilities are "limited due to the unremediable presence of...international coordination...." Having made such a showing, Winston respectfully requests the Commission to grant the requested waiver over the baseless opposition of EchoStar.

Respectfully submitted,

WINSTON BROADCASTING NETWORK, INC.

By:

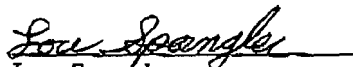


Nathaniel J. Hardy
Its Counsel

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Washington, D.C. 20036-3101
(202) 728-0400
March 24, 2006

Declaration & Certification

I, Lou Spangler, President of Winston Broadcasting Network, Inc., declare and certify that I have read the forgoing Reply to Opposition and that, to the best of my knowledge, the facts contained therein are true and correct.

A handwritten signature in cursive script, reading "Lou Spangler", written over a horizontal line.

Lou Spangler

President

Winston Broadcasting Network, Inc.

ATTACHMENT A

Blair Media Inc.
PO Box 753
Wheat Ridge, CO 80034

Comments Prepared for Winston Broadcasting Network, Inc.

I am a Broadcast Engineering Professional retained by Winston Broadcasting Network, Inc. In my capacity for Winston, I am directly responsible for the coordination of Legal and Engineering efforts to obtain Maximized Coverage of WBNX-DT for Winston. To attain that end I have been in constant touch with Carl T. Jones Corporation, the Engineering Firm retained by Winston in support of this purpose, with Irwin, Campbell and Tannenwald PC, Winston's retained attorneys for FCC matters and with representatives for Industry Canada.

In response to any statement of lack of diligence in attempting to complete WBNX-TV's transition to Digital Broadcast, I hereby state, that since January 2005 I have made multiple contacts with Industry Canada, at the staff and senior management levels, in an effort to speed their process for evaluation of Winston's Engineering Proposals. During that time I have spent numerous hours working with representatives of Carl T. Jones Corporation in developing variations to the proposed WBNX-DT facility in an attempt to satisfy Industry Canada's interference concerns. For example during the weeks of October 24, 2005 and October 31, 2005 I was in contact with staff members of Industry Canada three times, engineers at Carl Jones five times and station management twice. In fact the week of December 20, 2005, I left messages or spoke with staff members of Industry Canada twelve times in regard to various options in antenna design sent to them. In the years I have been engaged in this process, working with Carl Jones and Dielectric, we have presented Industry Canada with seven different variations in antennas; varying electrical beam tilt, mechanical beam tilt and horizontal pattern in each design. During that time Industry Canada has evolved through two different systems of software for evaluating interference. These efforts have resulted in the February 24, 2006, amendment to Winston's Application for Construction Permit now in front of the FCC, and which we are assured, by Industry Canada, will meet their concerns.

/Dirk B. Freeman/
Dirk B. Freeman

ATTACHMENT B



**STATEMENT OF JOHN E. HIDLE, P.E.
IN SUPPORT OF A
REQUEST FOR WAIVER OF
DIGITAL TESTING PURSUANT TO THE
Satellite Home Viewer Extension and Reauthorization Act
BPCDT-19991029AFM
WBNX-DT - AKRON, OHIO
DTV - CH. 30 - 1000.0 kW - 334.0 m HAAT**

Prepared for: Winston Broadcasting Network, Inc.

I am a Consulting Engineer, an employee in the firm of Carl T. Jones Corporation, with offices located in Springfield, Virginia. My education and experience are a matter of record with the Federal Communications Commission. I am a registered Professional Engineer in the Commonwealth of Virginia, Registration No. 7418, and in the State of New York, Registration No. 63418.

GENERAL

This office has been authorized by Winston Broadcasting Network, Inc., licensee of WBNX-TV, channel 55, Akron, Ohio, and applicant of paired DTV allotment WBNX-DT, channel 30, to prepare this statement in support of its pending request for a waiver of Digital Testing Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004. That Act provides for stations to request a waiver that would prohibit satellite subscribers from receiving or conducting a digital signal strength test in order to qualify for reception of a distant signal that would provide the same network program being broadcast by the station requesting the waiver. The Commission issued a Public Notice, DA 05-2979, on November 17, 2005 setting forth the parameters of a request for such a waiver.

BASIS OF WAIVER REQUEST

The applicant for WBNX-DT, Winston Broadcasting Network, Inc., has requested such a waiver in a timely manner. The criteria and standards for the Commission's review of a station's request for such a waiver are set forth in Section 339(a)(2)(D)(viii) of the Act. To be grantable, waiver requests must provide clear and convincing evidence that the station's digital signal coverage is limited due to the unremediable presence of one or more conditions listed in the Public Notice. WBNX-DT's waiver request is based on the need for international coordination or approval, the first listed condition in the Public Notice. WBNX-DT's application for a DTV construction permit, BPCDT-19991029AFM, which was filed in October 1999, has not been granted, and currently remains pending due to a coordination problem with Industry Canada.

HISTORY AND CURRENT STATUS OF APPLICATION

After being filed in October 1999 WBNX-DT's application for construction permit remained pending without action until the applicant received a letter from the Commission dated May 18, 2001 stating the results of the Commission's technical review of WBNX-DT's application for digital construction permit. The Commission concluded that the application could not be granted because it failed to adequately protect Canadian DTV channel 30 in Paris, Ontario. In July 2001 the applicant responded to the Commission's letter by submitting an engineering showing based on the Commission's implementation of the Longley-Rice propagation prediction methodology. WBNX-DT's application was amended in April 2002 in an attempt to comply with the requirements of Industry Canada.

Industry Canada eventually responded in a letter to the Commission dated April 3, 2003 in which WBNX-DT's application continued to be listed as unacceptable because it allegedly would cause interference to the DTV station in Paris, Ontario. The applicant was not notified by the Commission of the April 3, 2003 letter, and only became aware of its existence in September 2003. Subsequently the applicant yet again re-engineered its DTV proposal, attempting to comply with the current requirements of Industry Canada, and therefore amended its pending application again in March of 2004.

The applicant learned in September 2004 that Industry Canada continued to have questions about the amended application. Eventually the applicant became aware that Industry Canada had altered its evaluation methodology and that WBNX-DT's amended application was yet again predicted to cause interference to DTV channel 30 in Paris, Ontario. The application was further amended in February 2006 in order to meet the requirements of Industry Canada's current evaluation methodology. That latest iteration of WBNX-DT's application is currently pending with the Commission. The applicant has requested that the Commission expedite delivery of the latest amended application to Canada in order to secure Industry Canada's concurrence and obtain a construction permit from the Commission for WBNX-DT as soon as possible.

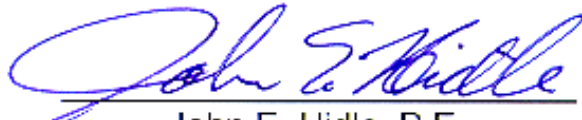
CONCLUSION

Since WBNX-DT's application for construction permit was filed in October 1999 the applicant has diligently pursued its prosecution and eventual grant by the Commission. Unfortunately, Akron, Ohio is just across Lake Erie from Canada, and the Letter of

Understanding between the Commission and Industry Canada, signed in September 2000, requires that DTV stations in the United States located within 400 kilometers of the common border can not be granted a construction permit unless those proposed facilities receive prior approval or concurrence from Industry Canada.

This statement was prepared by me and is believed to be true and correct to the best of my own knowledge and belief.

DATED: March 22, 2006

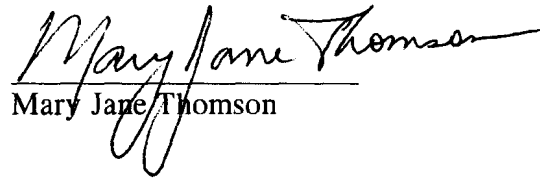

John E. Hidle, P.E.



CERTIFICATE OF SERVICE

I, Mary Jane Thomson, do hereby certify that on the 24th of March, 2006, copies of the foregoing have been submitted electronically to the Federal Communications Commission through its Electronic Comment Filing System and by First Class United States Mail, postage prepaid, to the following:

David K. Moskowitz
Executive Vice President
and General Counsel
EchoStar Satellite, LLC
9601 South Meridian Boulevard
Englewood, CO 80112



Mary Jane Thomson